



## City of Imperial Beach, California

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### OFFICE OF THE MAYOR

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July 9, 2010

The Honorable Kevin A. Enright  
Presiding Judge  
San Diego County Superior Court  
220 W. Broadway  
San Diego, CA 92101

**Re: Response to June 7, 2010 Grand Jury Report Entitled  
"Medical Marijuana in San Diego"**

Dear Judge Enright:

This letter constitutes the response to the above-referenced Grand Jury report on behalf of the City Council for the City of Imperial Beach. The response discusses those findings and recommendations pertinent to the City of Imperial Beach and does not discuss those findings and recommendations applicable to other governmental agencies and officers.

#### Response to Findings

Finding 5 says that adopting "cost-neutral" zoning and land use ordinances are effective for licensing, regulating, and inspecting dispensaries. The City Council disagrees with this finding. The City of Imperial Beach has not fully analyzed the way such an ordinance would affect the City of Imperial Beach. Also, no city in the county successfully regulates dispensaries through land use or zoning laws, except via complete bans on dispensaries. Further, any business regulations needed for "vice" type businesses (massage, adult entertainment, etc.) involve business licensing laws, independent of land use regulations. Therefore, based on these uncertainties, at this time, the City must disagree.

Finding 6 by the Grand jury is that the City of San Diego's medical marijuana task force "may" serve as a good model for other cities to adopt. The City Council agrees that the City of San Diego Medical Marijuana Task Force's guidelines *may* possibly serve as a guideline to other cities about how to regulate medical marijuana.

Finding 7 is that auditing of dispensaries is not occurring in the County. The City Council agrees with this finding. The City is not aware of any entity currently charged with this task.

Finding 10 from the Grand Jury is that the current moratorium has the effect of denying legitimate, qualified patients access to medical marijuana. The City Council disagrees with this finding. The Grand Jury report did not indicate that it interviewed any person specifically in Imperial Beach, did not indicate that it ascertained that anyone in Imperial Beach is a legitimately qualified medical marijuana patient, and did not demonstrate that anyone in Imperial Beach who had a medical need for marijuana was unable to obtain it. Additionally residents of Imperial Beach could likely obtain medical marijuana from other locations.

Finding 11 from the Grand Jury is that imposing regulatory fees and costs could impose a hardship on smaller collectives and cooperatives. The City Council disagrees with this finding because the Grand Jury did not audit any dispensary's finances, much less compare the burden of paying regulatory fees on dispensaries to the burden on local governments of regulating dispensaries, and the City has no reason to believe that medical marijuana cooperatives or collectives will be unable to afford reasonable regulatory fees.

#### Response to Recommendations

First, the Grand Jury called on the City to pass a cost-neutral ordinance licensing, regulating, and monitoring dispensaries, and limiting the number of dispensaries. The City will not implement this recommendation at this time because the recommendation is unwarranted and unreasonable. The recommendation is unreasonable for the City to implement at present because: (1) the *Anaheim* case mentioned in the Grand Jury report is still pending; (2) the initiative to legalize recreational marijuana is still pending and could cause significant changes to the City's regulatory approaches if passed; and (3) any ordinance could require Coastal Commission approval and possibly voter approval. These will not be accomplished within the ninety day response time frame set forth in the Penal Code. The City might decide to adopt an ordinance along these lines, but in light of the current legal uncertainties, doing so on the timeline seemingly required by the Grand Jury's report would be unwarranted and unreasonable.

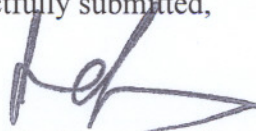
The Grand Jury's second recommendation is that the City should adopt regulations allowing it to shut down unlawful dispensaries. The City has already implemented this recommendation. Currently, under Chapters 1, 4, and 17 of the Imperial Beach Municipal Code, the City may take any number of enforcement actions against any business operating in violation of the City's zoning, business licensing, or other codes. These include pursuing injunctions in court to shut down improper businesses.

The final recommendation is that, once an ordinance is adopted, the City should lift its moratorium. For the same timing reasons discussed above for the first recommendation and given the fact that the City has not yet determined its policy approach to this matter, the City Council declines to implement this recommendation at present because the allotted timeframe is unreasonable.

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The City thanks the Grand Jury for its report and recommendations. The City Council is keenly aware of the importance of this matter to the citizens of Imperial Beach and therefore voted on July 7, 2010 to approve an extension to its moratorium on medical marijuana dispensaries for an additional year to allow the City to determine the best approach to this matter taking into consideration the unique characteristics of this City, its residents, and its resources.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Jim Janney', is written over a faint horizontal line.

Honorable Mayor Jim Janney  
Mayor, City of Imperial Beach

cc: City Council